

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RONALD WESLEY,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
DONALD VAUGHN, et al.,	:	
Defendants.	:	No. 03-1048

MEMORANDUM AND ORDER

J. M. KELLY, J.

FEBRUARY , 2004

Presently before the Court is a Motion to Dismiss filed by Defendants Superintendent Donald Vaughn ("Vaughn") and Unit Manager William Lee ("Lee") (collectively, "Defendants") requesting that this Court dismiss the Complaint filed by pro se Plaintiff Ronald Wesley ("Plaintiff"), an inmate currently incarcerated at the State Correctional Institution at Graterford, Pennsylvania ("SCI-Graterford"), for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff's Complaint contains a 42 U.S.C. § 1983 ("Section 1983") claim for violation of his rights under the First and Fourteenth Amendment of the United States Constitution, and other state constitutional and "tort law" claims, for Defendants' involvement in an alleged conspiracy against Plaintiff for having previously filed a lawsuit against SCI-Graterford employees. Plaintiff filed a response to the Motion, Defendants filed their reply thereto, and, with leave of this Court, Plaintiff filed a supplemental response. For the following reasons, Defendants'

Motion to Dismiss is **GRANTED**.

I. BACKGROUND

For purposes of this Motion, we recount the facts as Plaintiff alleges them. Previously, Plaintiff filed a lawsuit in this Court, docketed at Civil Action No. 99-1228, against "W. Conrad, J. Riddick & R. Eldridge" and "Eric Thompson," who are employees of SCI-Graterford. Conrad, Riddick and Eldridge failed to appear for a March 26, 2001 trial date in that suit, as Superintendent Vaughn instructed them not to appear at trial. Thompson, however, appeared, as did Vaughn and Lee, who were not named as defendants. Counsel for the Commonwealth in that case informed the Court that she failed to serve notice of the scheduled trial date on Conrad, Riddick and Eldridge, but counsel for the parties, including Plaintiff's court-appointed counsel nevertheless agreed to proceed with trial without those three defendants present.¹ Plaintiff alleges that, sometime during the trial, Vaughn consulted with Lee for the purpose of retaliating against Plaintiff for filing that suit.

The following day, Lee ordered Chuck Bobb, Plaintiff's prison counselor, to prepare Plaintiff's institutional file in

¹ During the trial, Plaintiff requested that the Court terminate representation by his court-appointed counsel and, instead, allow Plaintiff to represent himself. The Court granted Plaintiff's request and the trial was continued.

anticipation of a staffing meeting to discuss Plaintiff's housing accommodations. The meeting took place the following day, without providing Plaintiff notice or the opportunity to attend.

Twelve days later, Plaintiff was informed that he was being moved to a new unit, run by non-defendant Unit Manager Dennis, where Plaintiff would have to share a cell with another inmate and sleep on the top bunk. Plaintiff's former Unit Manager, Lee, knew that Plaintiff had a medical restriction against sleeping on the top bunk. Plaintiff complained and was immediately moved to another cell, which he also had to share. Plaintiff's new cellmate, however, was an "admitted smoker of tobacco products." Plaintiff also had a medical restriction against sharing a cell with a smoker, and immediately complained to non-defendant Sergeant Cunningham, to no avail.

Later, non-defendant Officer Leveque reprimanded Plaintiff for taking a short-cut to the dining hall from the Unit, rather than the circuitous route mandated by SCI-Graterford procedure. Officer Leveque threatened Plaintiff with disciplinary action if he did not take the longer route, even though the longer route had stairs and Plaintiff had a medical restriction allowing for "light-duty" only. Plaintiff complained to non-defendant Unit Manager Dennis, to no avail.

Plaintiff became "frustrated and angry" and, after making several complaints about being double-celled with a smoker, and having to take the long way to the dining hall, he received a

misconduct and was placed in restricted custody.

In response to his situation, Plaintiff attempted to file a grievance through the Commonwealth of Pennsylvania Department of Corrections grievance system. The parties to this matter agree that the Consolidated Inmate Review System consists of a three-part administrative process, which includes filing of an initial grievance with a grievance coordinator, an appeal of the grievance determination to appropriate intermediate review personnel, and a final review by the Central Office Review Committee. See Booth v. Churner, 206 F.3d 289, 293 n.2 (3d Cir. 2000) (outlining the grievance review process generally).

On April 10, 2001, Plaintiff submitted a grievance, which was rejected on April 12, 2001 for his failure to file separate grievances based upon different events. On April 13, 2001, Plaintiff re-submitted the grievance, which was again rejected on April 17, 2001 for the same reason. The grievance coordinator further directed: "You have not indicated that you have requested an exception from the Unit Manager to be permitted to use the alternative route to the dining area. Send a request slip." Plaintiff then submitted the grievance for the third time on April 19, 2001, and, on April 27, 2001, the grievance coordinator directed Plaintiff again to file separate grievances for different events, and also instructed: "An attempt should be made to contact Deputy Lorenzo who will investigate this matter. If no response you can resubmit."

By letter dated May 1, 2001, Plaintiff requested that Deputy Superintendent Lorenzo conduct an investigation. By letter dated May 28, 2001, Plaintiff re-submitted his grievance to the grievance coordinator for Deputy Superintendent Lorenzo's failure to respond to Plaintiff's May 1, 2001 letter. On May 30, 2001, Plaintiff's grievance was denied, noting as follows: "You can appeal to the Superintendent. You failed to show how you have been harassed." Plaintiff did not appeal this decision to Superintendent Vaughn or to the Central Office Review Committee.

II. STANDARD OF REVIEW

The purpose of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is to test the legal sufficiency of a complaint. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). We therefore accept all factual allegations in the complaint as true and give the pleader the benefit of all reasonable inferences that can be fairly drawn therefrom. Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). We are not, however, required to accept legal conclusions either alleged or inferred from the pleaded facts. Kost, 1 F.3d at 183. In considering whether to dismiss a complaint, courts may consider those facts alleged in the complaint as well as matters of public record, orders, facts in the record and exhibits attached to a complaint. Oshiver v. Levin, Fishbone, Sedan & Berman, 38 F.3d

1380, 1384 n.2 (3d Cir. 1994). A court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

III. DISCUSSION

Defendants seek dismissal of Plaintiff's Complaint for several reasons. First, Defendants claim that Plaintiff has failed to exhaust his administrative remedies. Second, Defendants argue that one prong of Plaintiff's two-prong conspiracy claim is moot. Third, Defendants contend that Vaughn and Lee lack personal involvement in the alleged illegal act as required for a Section 1983 claim. Fourth, Defendants claim that sovereign immunity bars Plaintiff's state law claims. Finally, Defendants assert that Plaintiff has not suffered any physical injury in connection with his claims. Because we agree with Defendants that Plaintiff has failed to exhaust his administrative remedies, and, accordingly, grant Defendants' Motion to Dismiss, we do not address Defendants' remaining arguments in support of dismissal.

Section 1997e(a) of Title 42 of the United States Code requires prisoners to exhaust administrative remedies before initiating a lawsuit pursuant to Section 1983:

No action shall be brought with respect to prison conditions under section 1983 of this title, or any

other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a). Defendants contend that Plaintiff's Section 1983 claim may not be brought before this Court until such time that he has exhausted his administrative remedies as required by Section 1997e. It appears that Plaintiff started the process of administrative review by filing a grievance according to the Consolidated Inmate Grievance System, but that Plaintiff did not completely exhaust that review process. While Plaintiff had made numerous attempts to file a grievance, he repeatedly failed to follow the grievance coordinator's instructions, which caused Plaintiff to file his grievance three times before the coordinator denied the grievance on the merits. When Plaintiff was instructed to appeal to Deputy Superintendent Lorenzo at the intermediate stage of the grievance process, Plaintiff indeed wrote a letter to Deputy Superintendent Lorenzo, but after concluding that he failed to respond in a timely fashion, Plaintiff resubmitted the grievance to the grievance coordinator. When the grievance coordinator rejected the grievance again, Plaintiff made a choice to cease the grievance review process altogether. Plaintiff never submitted a final appeal to the Superintendent or to the Central Office Review Committee, as required by the Consolidated Inmate Grievance System.

Plaintiff argues that he has made "good-faith attempts" to file his grievance in accordance with the administrative review

system but that, at each turn, his grievance was rejected by the grievance coordinator based on "unjustified reasons."² Plaintiff "deduced" that the grievance coordinator was "running interference against" him and that, even if the grievance was processed at that intermediate level, the Superintendent would never properly address a grievance that was filed against him. Taking this speculation to the extreme, Plaintiff concluded that the Superintendent would never forward an unflattering grievance to Central Office for final review. It appears that Plaintiff is attempting to argue that exhaustion of his administrative remedies would have been futile, since he believed that the available administrative process could not have provided him with the relief that he seeks.

The United States Court of Appeals for the Third Circuit has recently rejected this argument: "we are of the opinion that Section 1997e(a) . . . completely precludes a futility exception to its mandatory exhaustion requirement." Nyhuis v. Reno, 204 F.3d 65, 71 (3d Cir. 2000). Plaintiff neither alleges nor submits any documents to support a determination that he exhausted the three-part administrative process, instead, arguing

² With the Court's permission, Plaintiff filed a copy of the inmate grievances he submitted to SCI-Graterford officials relating to this matter. While we have considered these documents in disposing of this matter, since they are integral to Plaintiff's claim of exhaustion, we need not convert this motion to dismiss to one for summary judgment. See In re: Burlington Coat Factory Sec. Lit., 114 F.3d 1410, 1426 (3d Cir. 1997).

to the contrary, that exhaustion of his administrative remedies would have been futile. In accordance with Section 1997e, Plaintiff's Section 1983 claim must be dismissed for his failure to exhaust his available administrative remedies.³

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is **GRANTED**. Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE** for his failure to exhaust administrative remedies.

³ Plaintiff's remaining claims are alleged violations of the Pennsylvania Constitution and other state tort law. Pursuant to 28 U.S.C. § 1367, we decline to exercise supplemental jurisdiction over Plaintiff's state law claims.

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Defendants.	:	No. 03-1048

O R D E R

AND NOW, this day of February, 2004, in consideration of the Motion to Dismiss filed by Defendants Donald Vaughn and William Lee (collectively, the "Defendants") (Doc. No. 12), the Response filed by pro se Plaintiff Ronald Wesley ("Plaintiff") (Doc. No. 19), the Defendants' Reply thereto (Doc. No. 18), and Plaintiff's Supplemental Response (Doc. No. 22), **IT IS ORDERED** that Defendants' Motion to Dismiss is **GRANTED**. Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE** for his failure to exhaust administrative remedies.

BY THE COURT:

JAMES MCGIRR KELLY, J.